

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3
4 CHRIS BARKLEY, No. C 10-05389 CW (PR)
Petitioner,
5 v.
6 JAMES NUEHRING, Warden,
7 Respondent.
8 CHRIS BARKLEY, No. 11-01269 CW (PR)
Petitioner,
9 v.
10 MATTHEW CATE, Director, ORDER DENYING MOTIONS FOR
California Department of
11 Corrections and Rehabilitation,
Respondent.
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13 Petitioner has filed a motion for appointment of counsel in each
14 of his two pending habeas corpus actions.

15 The Sixth Amendment's right to counsel does not apply in habeas
16 actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir.), cert.
17 denied, 479 U.S. 867 (1986). Pursuant to statute, however, a
18 district court is authorized to appoint counsel to represent a habeas
19 petitioner whenever "the court determines that the interests of
20 justice so require and such person is financially unable to obtain
21 representation." See 18 U.S.C. § 3006A(a)(2)(B). Additionally, Rule
22 8(c) of the Rules Governing Section 2254 Cases makes the appointment
23 of counsel mandatory pursuant to section 3006A(g) whenever an
24 evidentiary hearing is required in a habeas action. See United
25 States v. Duarte-Higareda, 68 F.3d 369, 370 (9th Cir. 1995).

26 Based on the record presented to date in each of Petitioner's
27 cases, the Court finds appointment of counsel is not required.
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1 Petitioner's claims have been presented adequately, and the arguments
2 made in support of the claims have been placed in context by the
3 exhibits lodged by Respondent in support of the answers.

4 Further, at this stage of the proceedings, the Court is not in a
5 position to determine whether an evidentiary hearing will be
6 required. If, during its review of the merits of the petition, the
7 Court determines that further fact-finding is required, the Court
8 will decide whether to hold an evidentiary hearing or whether the
9 facts can be gathered by way of mechanisms short of an evidentiary
10 hearing, such as supplementation of the record with sworn
11 declarations from the pertinent witnesses. See Downs v. Hoyt, 232
12 F.3d 1031, 1041 (9th Cir. 2000).

13 In sum, the interests of justice do not require appointment of
14 counsel in these cases at this time. Should the circumstances change
15 materially at a later stage of the litigation, the Court will
16 reconsider this decision on its own initiative.

17 Accordingly, Petitioner's motions for appointment of counsel are
18 DENIED without prejudice.

19 This Order terminates Docket no. 14 in C 10-05389 and Docket
20 no. 4 in C 11-01269.

21 IT IS SO ORDERED.

22 Dated: 3/8/2012


CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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